

EXHIBIT 1

INTRODUCTION

From March 1995 to September 1998, Respondent Norm Morikawa was the Assistant Director of the Large Systems Division at the Stephen P. Teale Data Center. In his official capacity, Respondent accepted gifts from a single source that exceeded the annual \$280 gift limit, and failed to disclose the gifts on his annual statement of economic interests. In addition, within 12 months of receiving the gifts, Respondent participated in making a governmental decision, which had a reasonably foreseeable material financial effect on the donor.

For purposes of this Stipulation, the violations of the Political Reform Act¹ (the “Act”) are as follows:

- COUNT 1: From June 17-19, 1996, Respondent Norm Morikawa accepted gifts from the Amdahl Corporation with a total value of more than two hundred and eighty dollars (\$280), in violation of Government Code Section 89503, subdivision (c).
- COUNT 2: On or about September 10, 1996, within 12 months of receiving gifts from the Amdahl Corporation of two hundred and eighty dollars (\$280) or more, Respondent Norm Morikawa participated in making a governmental decision, in which the Amdahl Corporation was directly involved, in violation of Government Code Section 87100.
- COUNT 3: On March 31, 1997, Respondent Norm Morikawa failed to disclose gifts of fifty dollars (\$50) or more from the Amdahl Corporation on his annual statement of economic interests for 1996, in violation of Government Code section 87300.

SUMMARY OF THE LAW

COUNT 1

Section 89503, subdivision (c), prohibits a designated employee of a state agency from accepting gifts from a single source in excess of the annual gift limit, if the employee would be required to report the receipt of the gifts on his or her statement of economic interests. Under Regulation 18940.2, subdivision (a), as it was in effect in 1996, the annual gift limit was set at two hundred and

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at Title 2, California Code of Regulations, sections 18109-18997.

eighty dollars (\$280).²

Section 82028, subdivision (a), as it was in effect in 1996, defined a “gift” as:

“[A]ny payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

Regulation 18943, subdivision (a)(4), provides that a gift is not considered accepted or received if the recipient reimburses the donor of the gift within 30 days.

COUNT 2

To avoid conflicts of interest, Section 81002, subdivision (c), provides that the assets and income of public officials, which may be materially affected by their official actions, should be disclosed and in appropriate circumstances the officials should be disqualified from acting.

In furtherance of this purpose, Section 87100 prohibits public officials from making, participating in making, or attempting to use their official position to influence a governmental decision, in which they know or have reason to know that they have a financial interest. A public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official negotiates, without significant substantive review, with a private person regarding, among other things, a contractual agreement in which the official’s agency is a party. (Regulation 18702.2, subd. (a).)

A public official has a financial interest in a decision if it is reasonable foreseeable that the decision will have a material financial effect on a source of a gift worth \$280³ or more, provided to the official within 12 months before the decision. (Section 87103, subd. (3).)

Regulation 18704.1, subdivision (a)(2), provides that a person is directly involved in a decision when the decision involves the approval of a contract with that person. Regulation 18705.4, subdivision (a), provides that any reasonably foreseeable financial effect on a person who is a source of a gift and is directly involved in a decision before the official’s agency is deemed material. Although certainty is not required, a financial effect is considered reasonable foreseeable if there is a substantial likelihood that it will occur. (Reg. 18706.) If an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

COUNT 3

² The gift limit is adjusted biennially to reflect changes in the consumer price index. (Section 89503, subd. (f).)

³ The disqualification threshold for gifts is adjusted biennially to reflect changes in the consumer price index. (Section 87103, subd. (e).)

Section 87300 requires every agency to adopt and promulgate a conflict of interest code. Section 87302, subdivision (a), requires an agency's conflict of interest code to designate the employees of the agency who must file statements of economic interests, in which they disclose their reportable investments, business positions, interests in real property, income and gifts. As mandated by Section 87302, subdivision (b), an agency's conflict of interest code must require every designated employee of the agency to file an annual statement of economic interests disclosing his or her reportable economic interests during the preceding calendar year.

Section 87300 declares that the requirements of an agency's conflict of interest code shall have the force and effect of law, and any violation of those requirements shall be deemed a violation of the Act.

SUMMARY OF THE FACTS

From March 1995 to September 1998, Respondent Norm Morikawa was the Assistant Director of the Large Systems Division at the Stephen P. Teale Data Center (the "Teale Data Center"), which is housed in the Business, Transportation and Housing Agency. Respondent's position was listed in the conflict of interest code for the Teale Data Center as an employee who must file annual statements of economic interests. The conflict of interest code required Respondent to disclose on his annual statement of economic interest gifts worth \$50 or more from any business entity that engages in the sale of data processing equipment or services, including but not limited to, computer systems, hardware, software, and related support services.

COUNT 1

On June 17-19, 1996, Respondent attended a three-day conference sponsored by the Amdahl Corporation ("Amdahl") at the Spanish Bay Resort in Pebble Beach. Amdahl is a business that sells information technology services and products. According to the invitation addressed to Respondent, the conference schedule was as follows:

<p>Day One</p> <p>12:00 p.m. – 8:00 p.m. Registration 7:00 p.m. – 9:00 p.m. Reception/Dinner</p>	<p>Day Two – afternoon</p> <p>12:30 p.m. – 1:30 p.m. Luncheon 1:30 p.m. – 7:30 p.m. Golf Tournament 7:30 p.m. – 9:00 p.m. Reception/Dinner</p>
<p>Day Two – morning</p> <p>6:30 a.m. – 7:45 a.m. Breakfast 8:00 a.m. – 12:30 p.m. Town Hall Meeting</p>	<p>Day Three</p> <p>6:30 a.m. – 7:45 a.m. Breakfast 8:00 a.m. – 12:00 p.m. Town Hall Meeting</p>

To and from the conference, Respondent received a ride from Amdahl Account Executive Tim

Armstrong. Mr. Armstrong also purchased a round of golf (\$160) for Respondent on June 17, 1996, the first day of the conference; and a second round of golf (\$160) for Respondent on June 19, 1996, the last day of the conference.

Before attending the conference, Respondent was not required to pay a registration fee. At the conference, Amdahl provided five free meals to Respondent, and a free round of golf in a golf tournament on the second day of the conference. In addition, Amdahl subsidized the cost of Respondent's hotel room. According to a letter from Regional Director David Mungenast of the Amdahl Corporation to Ann K. Campbell of the Bureau of State Audits, dated May 26, 1997, the costs incurred by Amdahl per conference attendee were as follows:

Dinner (Day One)	\$65
Breakfast (Day Two)	\$22
Lunch (Day Two)	\$18
Dinner (Day Two)	\$55
Breakfast (Day Three)	\$22
Golf Tournament	\$195
<u>Hotel Subsidy</u>	<u>\$60</u>
Total	\$437

One month after the Amdahl conference, on July 16, 1996, the Secretary of the Business, Transportation and Housing Agency ("BTH"), Dean Dunphy, received an anonymous letter regarding the conference. The anonymous letter stated that Respondent had accepted inappropriate gifts at the conference. Thereafter, on July 18, 1996, Respondent reimbursed Mr. Armstrong \$330 for two rounds of golf.

In July 1996, Mr. Dunphy directed BTH Deputy Secretary/Special Counsel William G. Brennan, to conduct an internal investigation of the allegations made in the anonymous letter regarding the Amdahl conference. Mr. Brennan submitted his report to Mr. Dunphy on September 20, 1996. During an interview with FPPC Investigator Dennis Pellon, Mr. Brennan stated that he instructed the Teale Data Center to request an invoice from Amdahl for the conference. On October 30, 1996, four months after the conference, Amdahl sent an invoice to the Teale Data Center for \$395. Teale Data Center paid the invoice on November 7, 1996.

In June 1997, the Bureau of State Audits concluded its own investigation of the events surrounding the Amdahl conference, and submitted a draft copy of its report to BTH. In addition to finding that Respondent received inappropriate gifts at the Amdahl conference, the report also concluded that the Teale Data Center improperly paid the \$395 conference fee on November 7, 1996, because the fee included a round of golf. After receiving the report, BTH requested immediate reimbursement from Respondent for the game of golf. On July 14, 1997, over one year after the conference, Respondent reimbursed the Teale Data Center \$195 for his participation in the golf tournament that was held on the second day of the Amdahl conference.

COUNT 2

The Teale Data Center is a general-purpose data center that provides a broad range of data processing services to more than 200 government agencies. In 1996, the Teale Data Center's mainframe computer environment was comprised of five central processing units (CPUs), which are essentially the "brains" of the computer system. The Teale Data Center had purchased one of the five CPUs from Amdahl in April 1995.

In 1996, the Teale Data Center sought to upgrade the Amdahl CPU and received approval from all of the appropriate agencies, including BTH. Amdahl's initial price for the upgrade was \$1,710,000. In September 1996, Amdahl dropped the price to \$1,475,365. This price reduction was based in part on negotiations between Respondent and Amdahl Account Executive Tim Armstrong.

The Teale Data Center made a governmental decision to upgrade the Amdahl CPU. This decision had a reasonably foreseeable material financial effect on Amdahl. Respondent participated in the decision to upgrade the Amdahl CPU by negotiating with Mr. Armstrong on the purchase price. Respondent had a conflict of interest in this decision because he had accepted \$437 in gifts from Amdahl within 12 months before the negotiations.

COUNT 3

Respondent filed his annual statement of economic interests for the 1996 calendar year on March 31, 1997. On this disclosure statement, the conflict of interest code for the Teale Data Center required Respondent to disclose the gifts of meals, lodging and golf worth \$437 that he had received from Amdahl at the Amdahl conference in June 1996. Respondent failed to disclose these gifts on his annual statement.

CONCLUSION

In mitigation, Respondent paid for his own lodging at the Amdahl conference and submitted a claim for reimbursement to the Teale Data Center. According to the Respondent, at the time he paid for his hotel room, he did not know that Amdahl had subsidized the cost of the room at \$30 per night. In addition, during the internal agency investigation in July 1996, BTH Deputy Secretary/Special Counsel William G. Brennan had advised Respondent that the estimated value of his meals at the conference was only \$60, when in fact the actual value of the meals was \$182.

Regarding the conflict of interest violation, Respondent's participation in the decision to upgrade the Amdahl CPU caused minimal public harm. The necessity of the upgrade was independently reviewed and approved by two agencies—BTH, and the Department of Finance. The final cost of the upgrade was independently reviewed and approved by the Department of General Services. Respondent's participation in the decision resulted in the State of California saving \$234,635.

This matter consists of three counts, which carry a maximum possible penalty of Six Thousand Dollars (\$6,000).

The facts of this case justify imposition of the agreed upon penalty of Two Thousand Five Hundred Dollars (\$2,500).